IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO. 594 OF 2006
IN
APPEAL NO.468 OF 2002
IN
SUIT NO.93 OF 1977

ALONG WITH
NOTICE OF MOTION NO.1880 OF 2005
IN
SUIT NO.93 OF 1977

Marol Nand Dham Udyog Premises
Co.Op. Hsg.Society Ltd. ..Appellants
Vs.
Hector Hoshang Mehta and Ors. ..Respondents

...
Mr.Virag Tulzapurkar Senior Counsel
i/b. Wadia Ghandy & Co. for Appellants
Mr.N.Seervai Senior Counsel with Mr.P.S.Pratap
i/b Mulla & Mulla & Craigie Blunt & Caroe
...

CORAM: F.I.REBELLO AND
SMT.V.K.TAHILRAMANI,JJ.
DATE : AUGUST 7,2006

P.C.

1. Notice of Motion No.594 of 2006 is taken out by the Plaintiff who has succeeded. The Defendants have moved this Court by way of appeal. Appeal has been admitted and decree has been stayed except to the extent of carrying out inquiry as to mesne profit and the costs of the structures. An Officer of this Court was acting as a Commissioner for the purpose of the ascertaining the mesne profits. Parties now have

agreed that in respect of the mesne profits as also the structure, Shri.Salil Shah Advocate be appointed as Commissioner. Parties further agreed that costs of Commissioner will be shared equally by the appellants and respondents.

2. Respondents have also prayed by this Motion that considering the purported report of the Architect of the Appellants, the Appellants should be called upon to deposit a sum of Rs.1,95,80,524.41 in this Court pending the hearing and final disposal of this appeal.

3. As the decree has been stayed, it will not be possible for this Court to grant such a relief at this stage. Some other reliefs have also been prayed for. It will not be possible for this Court to consider those reliefs considering the stay granted.

4. Notice of Motion No.1880 of 2005 is taken out by the appellants praying that they may be permitted to cross-examine the Architect examined on behalf of the Respondents herein. We see no difficulty in granting the said prayer. Even otherwise also, the Respondents have no objection. Any witness examined,

has to be made available to the other side for cross-examination to enable the Court to consider the evidence of that witness as evidence in the proceedings. Considering that, the Respondents are entitled to cross-examine the Architect of the Appellants. Similarly, both the parties are entitled to cross-examine any witnesses examined by each of the parties. Considering the above, both Motions are disposed of with following directions:

5. Advocate Mr.Salil Shah is appointed as Commissioner to compute the mesne profits and value the structure and to submit his report on Commission of mesne profit and on the structure independently within four months from today. The costs of the Commission will be borne equally by the appellants and respondents.

5. With the above observations, both the Motions are disposed of.

6. Needless to say that parties are entitled to cross-examine the witness of each other.

[F.I.REBELLO, J.]

[SMT.V.K.TAHILRAMANI,J.]